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COMMITTEE AGAINST TORTURE

Nineteenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 314th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 19 November 1997, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.314/Add.1.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Cuba (continued) (CAT/C/32/Add.2)

Conclusions and recommendations of the Committee

1. At the invitation of the Chairman, the members of the Cuban delegation resumed their places at the Committee table.

2. The CHAIRMAN invited the Rapporteur for Cuba to read out the conclusions and recommendations adopted by the Committee on the initial report of Cuba.

3. Mr. PIKIS (Rapporteur for Cuba) read out the following text, in English:

"The Committee against Torture considered the initial report of the Republic of Cuba (CAT/C/32/Add.2) at its 309th, 310th, 312th and 314th meetings, on 17, 18 and 19 November 1997 (CAT/C/SR.309, 310/Add.1, 312 and 314) and adopted the following conclusions and recommendations:

A. Introduction

1. The report of Cuba was submitted on 15 November 1996, nearly within the time limit envisaged by the Convention on the submission of the initial report by the States parties following their accession to the Convention.

2. The Committee expresses its appreciation to the representatives of the Republic of Cuba on the presentation of their report and the effort made to answer most of the many questions raised by the Rapporteur, co-rapporteur and members of the Committee.

B. Positive aspects

1. The Cuban Constitution commits the State to upholding the dignity of the individual and safeguards the inviolability of the person and his/her home.

2. Cuba acknowledges universal jurisdiction for the trial of crimes against humanity, to which category, many would argue, torture belongs.

3. The provision of the Cuban Labour Code that persons acquitted of criminal offences are entitled to compensation for any period in which they were deprived of their liberty as a result of pre-trial detention is a salutary one.

4. The constitutional prohibition of the use of violence or pressure "against people to force them to testify" associated with the declaration that statements obtained in breach of this principle are null and void and the holding of those responsible for such violations liable to punishment is a most welcome one.

5. The criminalization of every form of complicity in crimes against humanity, human dignity and offences laid down in international treaties.

C. Factors and difficulties impeding the application of the Convention

1. The deteriorating economic conditions, due inter alia to the embargo in force, make it difficult for the State party to provide appropriate nutrition and essential medical supplies to prisoners.

D. Subjects of concern

1. The failure to establish a specific crime of torture as required by the Convention leaves a gap in the application of its provisions that is not filled by any of the existing offences directed against violations of the bodily integrity or the dignity of the individual. Moreover, the absence of the specific offence of torture makes difficult the monitoring of the application of the Convention.

2. The report of the Special Rapporteur appointed by the Commission on Human Rights on the human rights situation in Cuba is a matter of great concern to the Committee. To the same effect are reports by non-governmental organizations, a fact that intensifies our concern. The information disclosed in the above reports suggests that there occur serious violations of the Convention with regard to arrest, detention, prosecution, access to counsel and imprisonment, especially of persons referred to in the reports as dissidents, and that serious violations occur in prisons, affecting the safety, dignity and health of prisoners.

3. The failure of the Cuban authorities to provide a response to the allegations made in the above reports is an additional subject of concern.

4. Certain nebulous offences, namely "disrespect", "resisting authority" and "enemy propaganda" arouse the Committee's concern because of the uncertainty of their constituent elements and the room they provide as of their nature for misuse and abuse.

5. Certain types of punishment, primarily directed at the limitation of the liberty of citizens, i.e. internal exile and confinement at home, are matters of great concern to the Committee.

6. The absence of specific training of law enforcement personnel, civil, military and medical personnel and generally personnel involved in the arrest, custody, interrogation, detention and imprisonment about the norms of the Convention is a matter of concern, more serious still in view of the absence of the specific crime of torture.

7. The absence of adequate information about the investigation of complaints of torture and other inhuman and degrading treatment and the outcome of any such investigations. In the absence of such information the Committee cannot make a proper assessment as to whether there is

compliance on the part of the State party with the provisions of article 12 of the Convention. The Committee's concerns in these areas are enhanced because of the many complaints made that certain categories of persons referred to in the reports as dissidents are targeted and their fundamental rights violated without having satisfactory means of redress.

8. The absence of satisfactory information as to the rights of victims of torture and other inhuman and degrading treatment to seek redress, including satisfactory compensation.

E. Recommendations

1. The criminalization of torture as defined in the Convention by the creation of a specific crime or crimes giving effect to every aspect of it.

2. The establishment of a transparent permanent procedure for receiving complaints about torture and other inhuman and degrading treatment or punishment, the prompt examination of such complaints and bringing to justice those responsible.

3. The incorporation into the law of the right of the suspect or detainee to silence at all stages of investigation.

4. The establishment of a system of recurrent review of prisons as required by article 11 of the Convention with a view to improving conditions in prisons.

5. Revision of the rules governing the organization of the judicial system in accordance with international instruments on the subject, namely the United Nations guidelines on the independence of the judiciary.

6. The setting up of a comprehensive programme, that should be kept under constant review, for educating and training law enforcement personnel, medical personnel, public officials and everybody involved in the interrogation, custody or treatment of any person arrested, detained or imprisoned.

7. The establishment of a central register containing adequate statistical data about complaints of torture and other inhuman or degrading treatment or punishment, investigation of such complaints, the time within which the investigation is conducted and any prosecution mounted thereafter and its outcome.

8. The establishment of a compensation fund for the compensation of the victims of torture and other prohibited treatment.

9. Allowing into the country human rights non-governmental organizations and cooperating with them in the identification of cases of torture and other inhuman and degrading treatment.

10. Urgently addressing complaints about torture and other cruel, inhuman and degrading treatment or punishment raised in non-governmental organizations' reports and the reports of the Special Rapporteurs, taking such action as the obligations of the State party under the Convention warrant and reporting to the Committee on the outcome of such investigations and any action taken in its next periodic report."

4. Mr. SENTÍ DARIAS (Cuba) said that, as provided for in article 19, paragraph 3 of the Convention, his country would provide the Committee and the international community with clarifications in writing on some of the points that had been raised and on certain assertions that were unacceptable to Cuba. During the discussion, the Cuban delegation had already given some replies, but wished to convey its concern that the initial report, which presented the whole of the legal structure underlying Cuba's fulfilment of its obligations, had once again been overshadowed by the reports of Amnesty International and of the Special Rapporteur appointed as a result of direct pressure from the United States. Cuba had already stated quite unequivocally that it in no way recognized the legitimacy of that Rapporteur, whose appointment constituted barbaric interference in its internal affairs. As to the Amnesty International report, it echoed information that had been manipulated to harm Cuba's interests. Cuba by no means rejected non-governmental organizations and had often worked with them, provided that the lofty values of coexistence upheld by the members of the Committee themselves were respected.

5. He regretted that the Committee had made the mistake of speaking of "dissidents" and in doing so lent itself to machination which his country would always strongly resist. Cuba had acceded to the Convention and, just one year after having ratified it, had complied strictly with its international obligations because it had confidence in United Nations mechanisms, and it would continue to do so despite its particularly complex political situation; it would submit reports that would bring the truth to light, even if it was not to everyone's liking. He also regretted that the Committee had involuntarily made observations that were evidence of political manipulation and that, in doing so, had exceeded its mandate. In any event, Cuba would continue to work with the Committee and would endeavour, within the United Nations, to ensure that the truth came out and that Member States were given the respect due to them by virtue of the Charter, and to sustain the principles of international law.

6. Cuba's accession to the Convention would undoubtedly help it to improve its own structures, but was to be seen within the context of respect for its sovereignty. Cuba would always be prepared to dispel doubts and improve the situation, but pointed out that the Committee had not taken full account of the effects on the country of a blockade which amounted to the most cruel treatment inflicted by a large nation on a small one. Such treatment should be the first to be condemned by the Convention. In any event, the Cuban Government was determined to work energetically towards improving the situation of its people, including that of prisoners, even if they were delinquents and not good citizens.

7. In conclusion, the Cuban delegation had tried to give the Committee all the necessary clarifications and would continue to do so for the benefit of the other States parties to the Convention and the other members of the international community; it would therefore provide detailed replies and explanations in writing.

8. The CHAIRMAN thanked the Cuban delegation for the information it had given the Committee and the sincerity with which it had put its case, and expressed the hope that the dialogue would continue.

9. The member of the Cuban delegation withdrew.

The meeting was suspended at 3.30 p.m. and resumed at 3.35 p.m.

Third periodic report of Spain (continued) (CAT/C/34/Add.7):

Conclusions and recommendations of the Committee

10. At the invitation of the Chairman, the Spanish delegation resumed places at the Committee table.

11. The CHAIRMAN invited the Rapporteur for Spain to introduce the conclusions and recommendations adopted by the Committee on the third periodic report of Spain.

12. Mr. GONZALEZ-POBLETE (Rapporteur for Spain) read out the following text in Spanish:

"A. Introduction

1. Spain ratified the Convention against Torture on 10 October 1987 and made the declarations under articles 21 and 22 of the Convention. Spain has also been a party to the European Convention for the Prevention of Torture since 1989.

2. The third periodic report was submitted within the time-limit and was prepared in accordance with the Committee's guidelines on the form and content of periodic reports.

3. The Committee welcomes the presence of a large and qualified delegation to present the report as an indication of the Spanish Government's desire to cooperate with the Committee in discharging the functions entrusted to it under the Convention and thanks the State party for its emphatic recognition of the Committee's work.

4. The Committee welcomes with satisfaction the very detailed report, which was amplified and updated orally, and the additional information provided by the delegation in replying to questions and comments in the course of a frank and constructive dialogue.

B. Positive aspects

5. Spain has incorporated the offence of torture and acts constituting other inhuman, cruel and degrading treatment and punishment into its domestic legislation in terms which not only conform to the definition in article 1 of the Convention, but also expand on it in certain important respects, thus providing its citizens with greater protection against unlawful acts; the penalties laid down in the new legislation are commensurate with the gravity of the offences, as prescribed in article 4 of the Convention.

6. The Committee stresses the special importance of the final abolition of the death penalty.

7. In addition to the special legal provisions, the provisions of the Penal Code strengthen protection against torture, especially the provisions of the chapter on acts by State officials which infringe constitutional guarantees. The Committee has no doubt that the faithful and strict observance of the provisions in question will have the desired preventive and deterrent effects.

C. Factors and difficulties impeding the application of the Convention

8. According to the information provided to the Committee, judicial proceedings instituted following complaints of acts of torture, at both the pre-trial and trial stages, are often of a duration which is completely incompatible with the promptness required by article 13 of the Convention. The Committee has heard of cases in which the verdict was pronounced up to 15 years after the events.

9. The sentences imposed on public officials accused of acts of torture, many of which involve token penalties not even entailing a period of mandatory imprisonment, seem to indicate a degree of indulgence which deprives the criminal penalty of the deterrent and exemplary effect that it should have and is also an obstacle to the genuine elimination of the practice of torture. The Committee is confident that the severity of the penalties, which has been increased in the new legislation, will help to remedy this shortcoming.

D. Subjects of concern

10. The Committee continued to receive frequent complaints of acts of torture and ill-treatment during the period covered by the report.

11. The Committee also received information of many cases of ill-treatment which would appear to be motivated by racial discrimination.

12. Notwithstanding the legal guarantees as to the conditions under which it can be imposed, there are cases of prolonged detention

incommunicado when the detainee cannot receive the assistance of a lawyer of his choice, which seems to favour the practice of torture. Most complaints concern torture inflicted during such periods.

13. The Committee is also concerned about reports that although, in accordance with article 15 of the Convention, judges do not accept as incriminating evidence statements regarded as invalid because they have been extracted under duress or torture they nevertheless accept those same statements as incriminating other co-defendants.

E. Recommendations

14. It is recommended that the competent authorities should take the necessary measures to eliminate problems related to the excessive length of investigations into complaints of torture and ill-treatment.

15. It is recommended that State officials or agents responsible for conducting criminal proceedings on behalf of the State and society, should use all available procedural means for the effective and exemplary punishment of acts of torture, rather than leave that responsibility to be discharged exclusively through the actions of those who have suffered direct and personal injury.

16. It is recommended that consideration should be given to eliminating instances in which extended detention incommunicado and restrictions of the rights of detainees to be assisted by a defence lawyer of their choice are authorized.

17. The Committee calls on the authorities of the State party to institute procedures for the automatic investigation of any case of torture or ill-treatment brought to their attention by any means whatsoever, even when the victims do not lodge complaints through the prescribed legal channels."

13. Mr. GONZALEZ DE LINARES (Spain) thanked the Committee, and in particular the Rapporteur, for the interest which they had shown in his country's report. The Spanish Government would give the closest consideration to the Committee's conclusions and recommendations and would set about acting on them. Spain's contribution to the Voluntary Fund for Victims of Torture would be paid very shortly.

14. The CHAIRMAN thanked the Spanish delegation for its cooperation.

15. The delegation of Spain withdrew.

The public part of the meeting rose at 3.50 p.m.